



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CRIMINAL APPEAL NO.67 OF 2009

(Appeal from original SIRISIA RM CR. NO.242 OF 2009)

DANIEL MUTORO MUSE **APPELLANT**

VRS

REPUBLIC **RESPONDENT**

JUDGMENT

The Appellant Daniel Mutoro Mzee was convicted of the offence of being in possession of forged currency notes contrary to section 359 of the Penal Code and sentenced to serve four (4) years imprisonment. He pleaded guilty to the charge. The appeal is only against the sentence. The Appellant also contends that his constitutional rights were violated.

The state counsel indirectly conceded to the appeal. He told the court that the maximum sentence under section 359 of the Penal Code is only three (3) years yet the Appellant was sentenced to serve four (4) years imprisonment. He pleaded guilty to the charge. The Appellant is only aggrieved by the sentence imposed which he has already served halfway.

I have perused the evidence on record. The maximum sentence is provided for by section 359 of the Penal Code is three (3) years. The Appellant was given an illegal sentence of four (4) years. He was a first offender and this was a good mitigating factor. At the time of imposing sentence, the magistrate seemed to be unhappy with the Appellant whom he said had lied about his age that he was 25 years old. Whatever the case may be, this did not call for the excessive and unlawful sentence of four (4) years. The accused being a first offender did not even deserve the maximum sentence of three years provided for by the law.

The plea was unequivocal and the Appellant has not complained about it. In his written submissions he pleads with the court to reduce his sentence.

On the issue of violation of constitutional rights, the Appellant alleges that he was remanded in police custody for eleven (11) days before he was charged. Section 72 (3) of the repealed constitution only allowed the state to remand an offender for a period of 24 hours for a bailable offence. The Appellant said he was arrested on 14/5/2009 and arraigned in court on 25/5/2009. The record shows that

the Appellant was arrested on 14/5/2009 and plea was taken on 15/5/2009. This means that the Appellant was in police custody for only one day. There was no violation of the Appellant's constitutional rights as alleged. The state complied with the 24 hours period prescribed by the law.

I agree with the state that the court ought to deal with the issue of the sentence. The Appellant must accorded justice by this court. He pleaded guilty to the charge and saved a lot of judicial time. The Appellant was a first offender. He told the court he was a pupil in class VIII which the court did not believe. He also had a family with two children.

I hereby uphold the conviction and set aside the four (4) year unlawful jail term. I impose a two (2) year sentence of imprisonment. The appellant has already fully served the two year imprisonment sentence since 25/5/2009. I hereby set him at liberty unless otherwise lawfully held.

F. N. MUCHEMI
JUDGE

Judgment delivered in open on this 27th day of July, 2011 in the presence of the Appellant and the state counsel Mr. Ogoti.

F. N. MUCHEMI
JUDGE